

This General Information Letter provides general guidance on the principles of nexus. See 86 Ill. Adm. Code 150.201 (This is a GIL.)

July 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 28, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

We are writing on behalf of our client, Florida Corporation A. Our client would like to receive a determination of Nexus in Illinois.

The facts are as follows:

- A. The shareholders of Florida Corporation A are also shareholders in Florida Corporation B. Florida Corporation B has one employee in Illinois.
- B. Florida Corporation A processes the payroll through an employee leasing service for the employee of Florida Corporation B under Florida Corporation A's Federal Employer Identification Number.
- C. Florida Corporation A is reimbursed by Corporation B for all costs associated with the payroll. They do not receive any fees for this service.
- D. The payroll is processed in this manner to minimize the administrative cost associated with hiring an independent firm to process payroll for one employee.
- E. The business office and all associated functions of Florida Corporation A take place in Florida. Florida Corporation A also has nexus in Wisconsin where they maintain their inventory.

Does our client, Florida Corporation A, have Nexus in your state?

What filing requirements, if any, does our client, Florida Corporation A have with regards to corporate income tax and Illinois sales tax?

We appreciate your assistance in this matter.

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount and detail of information required to make such determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether you are responsible for paying tax in Illinois.

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner in which to determine nexus is for a Department auditor to examine all relevant facts and information. The following information outlines the principles of nexus and we hope will be helpful to you in determining whether your client would be responsible for paying tax in Illinois.

The term “retailer” means and includes every person engaged in the business of selling tangible personal property for use and not for resale in any form. See 86 Ill. Adm. Code 150.201(h), a copy of which is enclosed for your reference. An “Illinois Retailer” is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills orders from that inventory. The Illinois Retailer is then liable for Retailers’ Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a “retailer maintaining a place of business in Illinois” is described in the enclosed copy of Department regulations 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer’s Illinois customers even though the retailer does not incur any Retailers’ Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state’s tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court’s nexus test requires that, if due process requirements have been satisfied, the person or entity must have a physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative’s presence is temporary. Please refer to Brown’s Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers’ Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer’s Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Your letter contained very little information regarding the activities of your client. As stated above, determination of nexus with Illinois is very fact specific, with such determination best made by an auditor who can examine all information.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.